No. 15,864

IN THE

United States Court of Appeals

For the Ninth Circuit

CITY OF ANCHORAGE, a municipal corporation,

Appellant,

vs.

WILLIAM A. HILTON,

Appellee.

BRIEF FOR APPELLANT.

JAMES M. FITZGERALD,
City Attorney of the City of Anchorage,
Box 400, Anchorage, Alaska,

L. EUGENE WILLIAMS,
Assistant City Attorney of the City of Anchorage,

JOHN D. SHAW,
City Attorney of the City of Palmer,

EDWARD A. MERDES,
City Attorney of the City of Fairbanks,

SEABORN J. BUCKALEW,
City Attorney of the City of Seward,

Attorneys for Appellant.

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BRIEF FOR APPELLANT.

JURISDICTIONAL STATEMENT.

This is an appeal taken from a final judgment in favor of the appellee, filed and entered in the district court for the Territory of Alaska, Third Judicial Division, on the 28th day of October, 1957.

The district court had jurisdiction in this proceeding by virtue of the provisions of the Act of June 6, 1900, c. 786, Section 4, 31 Stat. 322, as amended, 48 USCA Sec. 101. The United States Court of Appeals for the Ninth Circuit has jurisdiction of said appeal by virtue of the provisions of Sec. 1291 of Title 28 of the United States Code, (as amended October 31, 1951, c. 655, Sec. 48, 65 Stat. 726). This appeal is governed

by Sec. 1294 of Title 28, USCA, (June 25, 1948, c. 646, 62 Stat. 930, as amended October 31, 1951, 65 Stat. 727).

STATEMENT OF THE CASE.

The City of Anchorage is a municipal corporation of the first class, organized under and by virtue of the laws of the Territory of Alaska.

The defendant is now and at all times herein mentioned has been the duly appointed, qualified and acting clerk of the United States District Court, for the District of Alaska, Third Judicial Division.

The City filed a complaint wherein the appellant City claimed certain fine moneys paid as the result of a judgment after an appeal from the city court should be paid to the City of Anchorage. Defendant appellee answered the complaint, a stipulation was entered into, and both parties agreed that the case could be submitted to the district court upon briefs. Briefs were filed and after due consideration the district court filed an opinion and entered judgment against the appellant here, dismissing appellant's claim for relief. Thereafter, on the 12th day of November, 1957, the appellant City of Anchorage filed a notice of appeal. Counsel for appellant and appellee then prepared an agreed statement of the case as the record on appeal according to the provisions of Rule 76, Federal Rules of Civil Procedure. This is essentially a suit in the nature of mandamus brought to compel the defendant appellee to turn over certain fine moneys

collected after trial of city court appeal as is required by the laws of the United States and statutes of Alaska. Inasmuch as the pertinent facts in this case have been set out in the agreed statement in the record, and also have been repeated in the opinion entered by the district court as a part of that statement, no further facts will be set forth here.

SPECIFICATION OF ERRORS.

1. The court erred in holding it had no jurisdiction of this action.

2. The court erred in ruling fines imposed on city court appeal be retained by the Clerk of the Court.

3. The court erred in dismissing appellant's complaint.

ARGUMENT I.

THE COURT ERRED IN HOLDING IT HAD NO JURISDICTION OVER A SUIT TO RECOVER MONEY PAID TO THE CLERK OF THE COURT.

The district court stated in the opinion as alternate grounds why the complaint should fail, " . . . This court does not have jurisdiction over money paid to the clerk of the court upon a judgment of this court." Supporting this statement, the court cited *Hill v. Valentine,* 164 F. 328. Even the district court indicated that the language quoted in the opinion in the *Hill* case was dicta (TR p. 7). An inspection of this case will show that the instant case can clearly be

distinguished. It is the appellant's contention that the statutes of the Territory of Alaska and the laws of the United States not only require the clerk to pay the fines to the City but it is doubtful whether the clerk had the authority to collect the fines imposed in the first place. This being the main argument of the appellant, it will be covered in a later portion of the brief. Though the *Hill* case has never been overruled, it has also never been cited by any other court. In this it is unique and peculiar to the Territory of Alaska. The language quoted by the district court to the effect that money that passes into the registry of the court can be legally paid out only under the authority of the government by its officers and agents in manners prescribed by statute is the main argument of the appellant here. In other words, it will be shown by the appellant's arguments that the statutes and rules and regulations made thereunder require that fines collected after appeal from the magistrate's court should be paid to the treasury of the City of Anchorage.

The court, in support of its holding that it had no jurisdiction over a suit as was brought here, cited the case of *D. B. Martin Co. v. Sannohouse,* 203 F. 517. In that case the court stated that the sole question was whether the money in the custody of this court is subject to attachment. To the same effect cited in the opinion *In re Stark,* 36 F. 2d 280 and *In re Chakos* 36 F. 2d 776, where court held that funds held in custodia legis were not subject to attachment or garnishment by the process of another court. The principles

stated in that case are well established and the appellant has no quarrel with these principles, however appellant is not attempting to reach funds in the registry of the court by virtue of garnishment, attachment or levy of execution which admittedly it could not do. Appellant urges and urged below in the district court that moneys collected after judgment for convictions for violations of City ordinances belong to the City of Anchorage, and such a disposition is provided both by statutes of the Territory of Alaska and by the laws of the United States. This is not a case where a claimant by virtue of process of one court is attempting to reach funds in the custody of another court. This is a suit in the nature of mandamus requiring the Clerk of the Court to follow the laws of the Territory and the United States and to pay moneys to the City of Anchorage in accordance with those laws.

The court in its opinion also had one other reference to jurisdiction, where the court said, " . . . While the legislature has authorized the City of Anchorage to codify a crime in its municipal ordinances and prosecute it in magistrate's court, the Territory nevertheless retains jurisdiction over the crime by providing a trial de novo on appeal." (TR p. 6.) It is urged that this statement is meaningless. Jurisdiction as defined by Black is, "The power and authority constitutionally conferred upon (or constitutionally recognized as existing in) the court or judge to pronounce the sentence of the law, or to award the remedies provided by law, upon a state of facts, proved or admitted, referred to the tribunal for decision . . . " It

cannot be questioned that the magistrate's court had jurisdiction to try violations of city ordinances, nor can it be questioned that the district court had jurisdiction to try the cause anew after an appeal from the decision of the magistrate's court. Thus we are unable to understand the meaning of the phrase that the Territory nevertheless retains jurisdiction over the crime.

Appellant submits that the district court erred in holding that it had no jurisdiction to try this action. Certainly the authorities cited by the court in the opinion are not applicable to the present factual situation.

ARGUMENT II.

THE COURT ERRED IN HOLDING THAT BECAUSE AN APPEAL FROM A JUDGMENT OF THE MAGISTRATE'S COURT IS A TRIAL DE NOVO, THAT THE FINES IMPOSED AS A RESULT OF THE JUDGMENT OF THE DISTRICT COURT HAD NO RELATION TO THE FINES IMPOSED BY THE CITY.

In reading the opinion in this case, it is difficult to determine what the court is actually holding. Is the court saying that because the trial on appeal is a trial de novo the fines imposed as the result of the judgment of the district court are to be collected and retained by the clerk of the court, It remains that the district court in its opinion denied appellant the relief it sought, which was the return of a certain fine paid as the result of a conviction after an appeal from the judgment of the magistrate's court. The district judge, citing Section 16-1-70 ACLA 1949 and other authorities, indicates in his opinion that, "Upon a

judgment on appeal after trial de novo, the judgment of the magistrate's court was vacated and appellant was then in the same position as if he had never been tried in that court." (TR p. 6.)

Appellant has no quarrel with the proposition that a trial on appeal is a trial de novo, nor did it have any objection to this premise in the court below. It is urged however that merely because the trial on appeal is a trial de novo it is not a logical extension that the fines imposed then should be collected and retained by the clerk of the district court.

Appeals are brought to the district court by virtue of Section 16-1-70 ACLA 1949. Appellee's position indicates that this section merely gives the procedural right of appeal from the magistrate's court to the United States District Court. Whether this is a procedural or substantive right does not appear to be material, but it is a statutory right of appeal from judgments of the magistrate's court. It is elementary that upon completion of any appellate procedure, the lower court lacks jurisdiction to proceed further until disposition is made by the appellate court.

Section 16-1-70, ACLA 1949 also says:

> " . . . and appeals shall lie from his judgments to the district court in the same manner as appeals from the judgments of the justice of the peace."

This perhaps is an unfortunate procedure, but was used as a convenient method of providing an appellate procedure without drafting new legislation. The trial

in the district court is to determine whether or not the person accused is guilty of having violated a city ordinance. Presumably, the district court is bound by the ordinances, including the maximums provided for punishment for violation of the ordinances.

The appellee urged below that said cause on appeal is tried and determined anew as in Section 68-9-10, ACLA 1949. It should be noted that this section applies to civil suits appealed from the justice court. The section applicable to criminal appeals from the justice court is found at 69-6-8, ACLA 1949. The language of the latter is substantially different. Though allowing amendment of pleadings, there is not found the language " . . . and the action should be deemed pending and for trial therein as if originally commenced in such court . . . ", as is contained in the section applicable to civil appeals. However, the trial de novo theory of criminal appeal apparently has been adopted by judicial decisions. (*United States v. Myers,* 2 A. 158; *United States v. Sharp,* 6 A. 408; *Jorge, Application of,* 10 A. 633, 639.)

In *United States v. Alexander,* found at 7 A. 28, we find that the appellate jurisdiction of the district court is dependent upon the original jurisdiction. In other words, if the district court were to try a city court appeal wherein the city had no jurisdiction over the offense, even though the trial is de novo and the district court might have jurisdiction over the same offense, there would be no proper proceedings in the district court because the jurisdiction in the appellate case is derivative.

Under the section appellee referred to below as requiring a trial de novo, *Pollard v. Booth Fisheries Co.,* 6 A. 287, is cited. This case apparently limits the de novo theory to its proper bounds. Under a statute of Alaska in effect at that time, plaintiff could only recover costs where he recovered judgment of $50.00 or more in the district court. It was urged in the *Pollard* case, Ibid., that even though an appeal was from justice court, and the statute required it to be tried de novo, the eventual judgment was a judgment of the district court and the statute allowing costs was applicable. This closely parallels appellee's theory that after trial and conviction in the district court the judgment is a district court judgment and the clerk is entitled to collect the fine. Presumably also based on the theory that this is so because it is a trial de novo.

From an Oregon case, *Nurse v. Justus,* 6 Oreg. 75, Pacific States Report Book 38, involving a similar problem, the court in the *Pollard* case quoted the following language:

> "An appeal, though tried anew, cannot be regarded as a matter so entirely independent of the original action as to permit the application in an action originally in the circuit court. It is not a new action, but simply a retrial of an action in an appellate tribunal for the purpose, theoretically, of correcting errors of the inferior court."

The court ruled that as plaintiff in the court below would have been entitled to costs, regardless of the fact that it was a trial de novo in the district court,

he would be entitled to costs because it was an appellate procedure although had it been commenced in district court, a recovery of $50.00 was needed to be entitled to costs.

The de novo theory apparently relied on by the court as one of the bases of denying appellant relief is not an omnipotent device capable of changing the character of a proceeding. There are limitations as to its magic. Judge Folta had occasion to deal with these limitations in the case of *City of Anchorage v. Anderson,* 13 A. 413. The question presented in that case was whether or not an appeal from the city court could be dismissed on appellant's failure to appear for trial. Defendant in that case argued that since the trial on appeal was de novo, it must be dealt with as though originating in the district court and a dismissal would be tantamount to a conviction without a trial. " . . . (1, 2) I am of the opinion that this contention cannot be sustained. A trial de novo does not require that the case be treated in all respects as though it originated in the appellate court." (Court citing cases.) The court also said, "Moreover, the provision of Section 69-6-9, quoted, itself negatives the view that the case must be treated as though it originated in the District Court."

Relying on the previous case cited, it does not seem logical that because a trial is one to be tried de novo that this fact should have any bearing on the disposition of the fine imposed for violation of the city ordinance. Appellant submits then that because a trial of an appeal from the city magistrate's court is a trial

de novo this has little or no bearing on the question of the disposition of the fines imposed and collected for violations of city ordinances. The de novo theory governs the procedure and not the substance of the case.

ARGUMENT III.

THE DISTRICT COURT ERRED IN DISMISSING PLAINTIFF'S ACTION AND THEREBY DETERMINING THAT FINES IMPOSED ON A CONVICTION AFTER AN APPEAL FROM THE JUDGMENT OF THE MAGISTRATE'S COURT BE RETAINED BY THE CLERK OF THE COURT.

The district court in its opinion (TR p. 5) did little to shed light on the question of statutory interpretation concerning the disposition of the fines here involved. In the brief submitted to the district court it is believed that the statutes of the Territory of Alaska and the laws of the United States involved were fully presented. It is further contended that the materials submitted required a determination based on the statutory construction and interpretation. It is obvious from reading the court's opinion that nothing was settled nor were the pertinent statutes even mentioned.

The appellant's position is that a reading of the statutes involved requires that the fines be paid to the City. There are two basic statutes involved which may or may not be opposed to each other. These are set out more fully in the appendix to this brief. The first one is Section 54-4-5, ACLA 1949, also found iden-

tically in Section 106, Title 48 USCA. Both sections set forth essentially the duties of the Clerk of the Court. The other statute involved in this determination is 16-1-35, ACLA 1949. In 54-4-5 ACLA 1949 or in Section 106, Title 48 USCA, we find the following language: " . . . He shall also collect and receive all moneys arising from the fees of his office, from licenses, fines, forfeitures, judgments, or on any other account authorized by law to be paid to or collected by him, and shall apply the same . . . " Obviously the word "fines" is used in the general sense. It is the appellant's contention that "fines" in this first section refers to fines where they may be imposed for violations of Federal or Territorial law. As to what is to be done with the money collected by the Clerk of the Court, and which would have a bearing on the meaning of the word "fines", or at least as to the disposition of the fines, we find the language, " . . . and any other moneys the disposition of which is otherwise specially provided for by law, shall not be available for the expenses of the court, but shall be paid over or deposited as provided by law for other districts." In all cases, whether the trial is de novo or otherwise, the fine that is imposed is a fine imposed for the violation of a city ordinance. The appellant believes the controlling statute in this instance is 16-1-35, ACLA 1949, the pertinent portion of which is " . . . All fines and costs imposed and collected for violation of municipal ordinances shall belong to the municipality and be paid over to its Treasury." It should be noted that there is no limiting language in this section pro-

viding that after appeal fines are to be collected or paid to the Clerk of the Court, or belong to the United States, nor does this section say "collected by the municipality."

Appeals are brought to the district court by virtue of 16-1-70 ACLA 1949. The pertinent portion of this section says: "The municipal magistrate shall have jurisdiction of all actions for violation of municipal ordinances and appeals shall lie from his judgments to the district court in the same manner as appeals from the judgments of a justice of the peace." This perhaps is an unfortunate procedure but was used as a convenient method of providing an appellate procedure from the magistrate's court to the district court without drafting new legislation. It was unfortunate in the sense that it left unsolved or clearly defined the collateral problems of (1) disposition of the fines, (2) who are the proper parties to prosecute the appeal, and (3) whether or not the defendant would be entitled to a jury trial in the appellate court or the district court. This action was brought against the clerk of the district court in hopes of solving at least one of those problems, that is, the disposition of the fine money. However, the district court sought only to rid itself of the action and not to solve the problem. Both the appellant and the appellee dealt with the statutes involved, and cited cases bearing on the subject. Apparently the district court chose to ignore these citations and made no mention of the statutes involved in its opinion, thus it was felt necessary to bring this appeal to this court.

As already indicated, one of the main issues seems to be whether or not the provisions of 16-1-35 ACLA 1949 conflict with the provisions of 54-4-5 ACLA 1949 or Section 106, Title 48. It is the appellant's contention that these two statutes do not conflict. It is felt necessary to trace the history of Section 106 of Title 48. The annotations under the section indicate that the original act of Congress was the Act of June 6, 1900. (31 Stat. 321, Sec. 7.) Page 324 sets out the duties of the clerk. The pertinent portion of Section 7 is as follows: "He shall receive all moneys collected from licenses, fines, and forfeitures or any other case except for violation of the customs laws and shall apply the same to the incidental expenses of the proper division of the district court and the allowance thereof is directed by the judge." This entire Section 7 is to be found in the appendix.

This act was then amended by congress in the Act of March 3, 1909 (35 Stat. 840) wherein we find the following pertinent language: "He shall also collect and receive all moneys arising from the fees of this office, from licenses, fines, forfeitures, judgments or any other account by law authorized to be paid to or collected by him and shall apply the same except . . . " As to the disposition of moneys by the clerk, we find the following, " . . . and any other moneys, the disposition of which is otherwise specially provided for by law shall not be available for the expenses of the court but shall be paid over or deposited as provided by law for other districts."

This section very closely follows the provisions of Section 106, Title 48. Appellant's contention is that significant in the amendment is the language found for the first time, " . . . and any other moneys, the disposition of which is otherwise specially provided for by law, shall not be available for the expense of the court, but shall be paid over or deposited as provided by law for other districts." There must have been a reason for addition of this language.

In between these two acts providing for civil government and in setting forth the duties of the clerk of the court, Congress passed in 1904, Chapter 1778, found at 33 Stats. 529, an act to amend and clarify the laws relating to municipal corporations in the District of Alaska. Pertinent portions of this act of Congress are found at page 532, and we quote as follows: " . . . the cost of such imprisonment shall be borne by the municipality and not by the United States. All fines and costs imposed and collected for violation of municipal ordinances shall belong to the municipality and be paid over to its Treasurer. The municipal magistrate shall have jurisdiction over all actions for violation of municipal ordinances and appeals shall lie from his judgments to the District Court in the same manner as appeals from the judgments of ex officio justices of the peace." Essentially the same language is found in 16-1-35, ACLA 1949, arrived at after successive codification. The first act prescribing the duties of the District Court was passed in 1900, 31 Stats. 321. At that time there was no

authority delegated to cities to provide for a municipal court or to impose fines and sentences for violations of city ordinances. The power to incorporate and pass such ordinances was given to cities under an act of April 28, 1904, found at 33 Stats. 529. The original act providing for the duties of the Clerk of the Court, when amended by the Act of March 3, 1909, 35 Stat. 840, expanded these duties and we find the significant language " . . . and other moneys, the disposition of which is otherwise specially provided for by law." Appellant urges this statute contemplated paying certain moneys and in this case, fine moneys collected after appeal from the city court, to the city or there would be no reason for the new language in the later statute. If the statutes are construed together and thus read, there is no conflict between the provisions of 16-1-35 and Section 106, Title 48. It is urged that there is specific language in 16-1-35 ACLA 1949, (originally enacted by Congress) providing that fines imposed for violations of municipal ordinances belong to the municipality. In opposition to this there is no general statute providing that all fines belong to the United States where imposed in the district court. The only statute that can be pointed to is the statute setting out the duties of the Clerk of Court and the language of Section 106, Title 48, USCA indicates that some moneys in the hands of the clerk of the court may be disposed of as provided for by law.

A case that closely parallels the situation here is *City of Maysville v. Key,* 247 S.W. 374. In that case

a suit was brought against the Clerk of the Circuit Court to recover a fine and costs assessed against the defendant found guilty on an appeal from a police court. The trial in that case was also a trial de novo. The court in that case quoted language of Kentucky Statutes under powers of municipalities of the third class, the intent of which is very similar to ours, providing that fines and forfeitures recovered in the magistrate's court be paid to the treasurer of the city. In the Kentucky case the violation was a violation of state law tried in the city court. The court in that case reasoned that where a case arose in the police court, although appealed to the circuit court, a city of the third class was entitled to recover fines assessed after the conclusion of the appellate case. It is urged that in the instant case the position of the city is stronger in that the particular prosecution is not commenced for violations of Territory or Federal law, but is commenced for violations of city ordinances. Kentucky Statutes further provided that fines and forfeitures recovered in the magistrate's court be paid to the treasury of the city. In the present situation, we are not limited by the language "collected by the magistrate" but the statute clearly says, "all fines imposed and collected for violations of city ordinances belong to the city." A plain reading of the statutes involved would certainly indicate that the city is entitled to fines whether the trial be in the magistrate's court or the district court.

For further authority on the general question of the disposition of fines, see the following: *Cherokee*

County v. Cunningham, 68 So. 2d 507; *Ivester v. Mozeley,* 80 S.E. 2d 197; *Delta County v. The City of Gladstone,* 8 N.W. 2d 908; *State v. Bosworth,* 52 Atlantic 423.

In *State v. Bosworth,* 52 Atl. 423 where appeals from city court were taken as provided by statute in the same manner as appeals from justice court (as in Alaska), the court held fines under Vermont law belong to the state. But in that case, it should be noted that under Vermont statutes, specific language provided that in all cases appealed and entered in that county court, the fines and costs imposed belong to the state. There is no such specific language in Alaska statutes or applicable Federal law.

CONCLUSION.

Appellant submits that the district court had jurisdiction to try this action, and further that because a trial on an appeal from city court is tried de novo and the judgment is a judgment of the district court, this has little or no bearing on the disposition of the fine money.

As the cities of the Territory grow larger and the case load in each city court increases, so do the cases appealed to the district court. It is inconceivable that Congress and the Legislature in its wisdom, meant that fines imposed for violations of city ordinances should belong to anyone but the city concerned. Orderly regulation and enforcement of municipal ordinances re-

quires a magistrate's court; the appellate procedure protects the rights of the accused; it would seem logical and equitable that the municipality enforcing these laws should be entitled to the fines as at least a partial compensation for enforcing law and order within its boundaries.

Wherefore, appellant prays that the judgment of the district court be reversed.

Dated, Anchorage, Alaska,
March 28, 1958.

Respectfully submitted,

JAMES M. FITZGERALD,
City Attorney of the City of Anchorage,
L. EUGENE WILLIAMS,
Assistant City Attorney of the City of Anchorage,
JOHN D. SHAW,
City Attorney of the City of Palmer,
EDWARD A. MERDES,
City Attorney of the City of Fairbanks,
SEABORN J. BUCKALEW,
City Attorney of the City of Seward,
Attorneys for Appellant.

(Appendix Follows.)

Appendix.

Appendix

STATUTES CITED IN BRIEF.

ACLA 1949
Section 16-1-35 POWERS OF COUNCIL:

"...

"Twelfth. (Penalty for violation of ordinances.) To prescribe the punishment for the violation of any municipal ordinance, but such punishment shall not exceed in any case a fine of One Hundred Dollars ($100.00) or imprisonment in a municipal jail of thirty days, or both, in the discretion of the court, together with the costs of prosecution, Provided: That a judgment that the defendant pay a fine may also direct that he be imprisoned in the municipal jail until the fine be satisfied, specifying the extent of the imprisonment, which cannot exceed one day for every two dollars of the fine; and in case the entry of judgment should omit to direct the imprisonment and the extent thereof, the judgment to pay the fine shall operate to authorize and require the imprisonment of the defendant until the fine is satisfied at the rate above mentioned. All fines and costs imposed and collected for violation of municipal ordinances shall belong to the municipality and be paid over to its Treasury."

ACLA 1949
Section 16-1-70 OFFICERS AND EMPLOYEES:

"JURISDICTION AND PROCEEDINGS: COSTS: JUDGMENT AND ENFORCEMENT OR REVIEW

OF SAME. The municipal magistrate shall have jurisdiction of all actions for violation of municipal ordinances and appeals shall lie from his judgments to the district court in the same manner as appeals from the judgments of a justice of the peace. The rules of proceeding before a municipal magistrate shall be as near as practicable the same as before a justice of the peace, unless otherwise prescribed by ordinance enacted by the council. The council may also by ordinance prescribe the costs to be taxed in proceedings before the municipal magistrate.

A judgment in the court of a Municipal Magistrate shall be enforced in the same manner as provided by law for the enforcement of judgments in the court of a Justice of the Peace. Executions shall be addressed to the Chief of Police or any police officer of the city and the levy thereof, as well as all other proceedings thereunder, shall be the same as in the court of a Justice of the Peace.'' (L 1923, ch 97, Sec. 24, p. 204; am L 1927, ch 61, Sec. 1, p. 126; L 1929, ch 5, Sec. 1, p. 29, effective March 26, 1929; CLA 1933 Sec. 2399.) Cases cited under notes of decisions: Bruno Munro, In re (1901), 8 A 264; Fairbanks v. Drayton (1931), 8 A 264; Nome v. Reed (1901), 1 A 395; Guidoni v. Wheeler (CCA 9th 1916) 230 F. 93, 144 CCA 391.

ACLA 1949

Section 54-4-5. NUMBER OF CLERKS: DISPOSITION OF FUNDS: ASSISTANTS.

Four clerks shall be appointed for the court, one of whom shall be assigned to each division thereof, and

during his term of office shall reside at such place in the division as the Director of Administrative Office of the United States Courts may direct. Each clerk shall, in his division of the district perform the duties required or authorized by law to be performed by clerks of United States courts in other districts, and such other duties as may be prescribed by the laws of the United States relating to the district of Alaska. He shall preserve copies of all laws applicable to the district and shall preserve all records and record all proceedings and official acts of his division of the court. He shall also collect and receive all moneys arising from the fees of his office, from licenses, fines, forfeitures, judgments, or on any other account authorized by law to be paid to or collected by him, and shall apply the same, except the money derived from licenses and fines imposed for failure to pay license taxes, to the incidental expenses of the proper division of the district court and the allowance thereof as directed in written orders, duly made and signed by the judge, and shall account for the same in detail, and for any balances on account thereof, under oath, quarterly, or more frequently if required, to the court, the Director of Administrative Office of the United States Courts, and the Secretary Administrative Office of the United States Courts, and the Secretary of the Treasury; Provided, that fines imposed and collected for failure to pay license taxes shall be disposed of as provided by law for the disposition of such license taxes; and moneys accruing from violations of the customs laws, civil customs cases, or internal-revenue

cases, moneys, not including costs, accruing from civil post-office suits, fines in criminal cases for violations of the postal laws, the net proceeds of sales of public property under section 487 of Title 31 (USC) and any other moneys the disposition of which is otherwise specially provided for by law, shall not be available for the expenses of the court, but shall be paid over or deposited as provided by law for other districts. And after all payments ordered by the judge shall have been made, any balances remaining in the hands of the clerk shall be by him deposited to the credit of the United States at such times and under such rules and regulations as the Secretary of the Treasury may prescribe. The clerk shall be ex officio recorder of instruments as hereinafter provided and also register of wills for the division, and shall establish secure offices for the safekeeping of his official record where terms of his division of the court are held. He may appoint necessary deputies and employ other necessary clerical assistance to aid him in the expeditious discharge of the duties of his office, with the approval of the court or judge, and, subject to the approval of the Director of the Administrative Office of the United States Courts, fix the compensation of such deputies and the compensation for such clerical assistance. Any person so appointed or employed shall be paid by the clerk on the order of the judge, as other court expenses are paid. (31 Stat 324; 35 Stat 840; CLA 1931, Sec. 367; CLA 1933, Sec. 1097; am 53 Stat 1223; 54 Stat 384; June 25, 1948, ch 646, Sec. 10, 62 Stat ....., effective September 1,

1948; 48 USC Sec. 106.) Cases cited under notes of decisions, In re Dalton (1932) 8 A 338; In re Hill's Bottling License (1902) 1 A 436; In re Dalton (1932) 8 A 332; Hills v. Valentine (CCA 9th 1908) 164 F 328, 90 CCA 260; Statter v. United States (CCA 9th 1933) 66 F2d 819.

31 Stats. 786, Sec. 7 p. 324.

"AN ACT MAKING FURTHER PROVISION FOR A CIVIL GOVERNMENT FOR ALASKA, AND FOR OTHER PURPOSES.

Sec. 7. Three clerks shall be appointed for the court, one of whom shall be assigned to each division thereof, and during his term of office reside at the place designated for the residence of the judge of such division. Each clerk shall, in his division of the district, perform the duties required or authorized by law to be performed by clerks of United States courts in other districts, and such other duties as may be prescribed by the laws of the United States relating to the district of Alaska. He shall preserve copies of all laws applicable to the district and shall preserve all records and record all proceedings and official acts of his division of the court. He shall also receive all moneys collected from licenses, fines, forfeitures, or in any other case, except from violations of the customs laws, and shall apply the same to the incidental expenses of the proper division of the district court and the allowance thereof as directed by the judge, and shall account for the same in detail and for any balances on account thereof quarterly to and under

the direction of the Secretary of the Treasury. He shall be ex officio recorder of instruments, as hereinafter provided, and also register of wills for the district, and shall establish secure offices where terms of his division of the court are held for the safe-keeping of his official records."

33 Stats. 1778, Sec. 10 p. 532.

"AN ACT TO AMEND AND CODIFY THE LAWS RELATING TO MUNICIPAL CORPORATIONS IN THE DISTRICT OF ALASKA.

Tenth. To prohibit drunkenness, gambling, houses or places of ill-fame, disorderly conduct, or conduct endangering the public peace, public health, or public safety, to define such offenses, and to prescribe the punishment therefor, but such punishment shall not exceed in any case a fine of one hundred dollars or imprisonment in the municipal jail not exceeding ninety days, or both, in the discretion of the court, together with the costs of prosecution. The costs of such imprisonment shall be borne by the municipality and not by the United States. All fines and costs imposed and collected for violation of municipal ordinances shall belong to the municipality and be paid over to its treasurer. The municipal magistrate shall have jurisdiction of all actions for violation of municipal ordinances, and appeals shall lie from his judgments to the district court in the same manner as appeals from the judgments of ex officio justices of the peace."

35 Stats. 269, Sec. 3 p. 840.

"AN ACT TO AMEND SECTION EIGHTY-SIX OF AN ACT TO PROVIDE A GOVERNMENT FOR THE TERRITORY OF HAWAII, TO PROVIDE FOR ADDITIONAL JUDGES, AND FOR OTHER JUDICIAL PURPOSES.

Sec. 3. That section seven of said chapter one of title one is hereby amended so as to read as follows:

'Sec. 7. That four clerks shall be appointed for the court, one of whom shall be assigned to each division thereof, and during his term of office shall reside at such place in the division as the Attorney-General may direct. Each clerk shall, in his division of the district perform the duties required or authorized by law to be performed by clerks of United States courts in other districts, and such other duties as may be prescribed by the laws of the United States relating to the district of Alaska. He shall preserve copies of all laws applicable to the district and shall preserve all records and record all proceedings and official acts of his division of the court. He shall also collect and receive all moneys arising from the fees of his office, from licenses, fines, forfeitures, judgments, or on any other account authorized by law to be paid to or collected by him, and shall apply the same, except the money derived from licenses, to the incidental expenses of the proper division of the district court and the allowance thereof as directed in written orders, duly made and signed by the judge, and shall account for the same in detail, and for any balances on account thereof, under oath, quarterly, or more frequently if

required, to the court, the Attorney-General, and the Secretary of the Treasury: PROVIDED, that moneys accruing from violations of the customs laws, civil customs cases, or internal-revenue cases, moneys, not including costs, accruing from civil post-office suits, fines in criminal cases for violations of the postal laws, the net proceeds of sales of public property under section thirty-six hundred and eighteen, Revised Statutes as amended, and any other moneys the disposition of which is otherwise specially provided for by law, shall not be available for the expenses of the court, but shall be paid over or deposited as provided by law for other districts. And "after all payments ordered by the judge shall have been made, any balances remaining in the hands of the clerk shall be by him deposited to the credit of the United States and be covered into the Treasury of the United States at such times and under such rules and regulations as the Secretary of the Treasury may prescribe. The clerk shall be ex officio recorder of instruments as hereinafter provided and also register of wills for the division, and shall establish secure offices for the safe-keeping of his official records where terms of his division of the court are held. He may appoint necessary deputies and employ other necessary clerical assistance to aid him in the expeditious discharge of the duties of his office, with the approval and at compensation to be fixed by the court or judge, subject to the approval of the Attorney-General. Any person so appointed or employed shall be paid by the clerk on the order of the judge, as other court expenses are paid." ' "

ACLA 1949
Section 69-6-8

"WHEN APPEAL DEEMED PERFECTED: AMENDMENT OF PLEADINGS.

That from the filing of the transcript with the clerk of the district court the appeal is perfected, and the action is to be deemed pending therein and for trial upon the issue tried in the justice's court. The appellate court has the same authority to allow an amendment of the pleadings on an appeal in a criminal action that it has on an appeal in a civil action. (CLA 1913, Sec. 2558; CLA 1933, Sec. 5848.)"

ACLA 1949
Section 69-6-9

"JUDGMENT ON APPEAL.

That when an appeal is dismissed the appellate court must give judgment as it was given in the court below, and against the appellant, for the costs and disbursements of the appeal. When judgment is given in the appellate court against the appellant, either with or without trial of the action, it must also be given against the sureties in his undertaking according to the nature and effect thereof. (CLA 1913, Sec. 2559; CLA 1933, Sec. 5849.)"